IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO. 45 OF 2005

Smt.Miradevi A. Devnani — Petitioiner

Vs.

Shri Ramchand Devnani & Ors. — Respondents

Mr.Virendra Kanojia for petitioner.

Mr.Somaiya Jayesh i/b M/s. A.Bharat & Co. for respondents.

CORAM: B.H.MARLAPALLE,J.
July 06, 2005.

ORAL ORDER:

1. Heard the learned counsel for the petitioner who was impleaded as defendant no.3 in S.C. Suit No.4036 of 1987. The said suit came to be dismissed as withdrawn as the parties to the suit had placed on record consent terms, as per the order passed by the learned Judge of the City Civil Court on 16-9-2002. The relevant paragraphs of this order dated 16-9-2002 read as under:

> "In view of the aforesaid consent terms, Ms.Trivedi, Adv. for the plaintiffs made the endorsement on the plaint that the plaintiffs withdraw the present suit. Considering the said endorsement, present suit stands dismissed as withdrawn.
>
> Since the present suit has been withdrawn as aforesaid in view of filing of consent terms, nothing survives in pending notice of motion No.1616 of 2002 and the said Notice of Motion

also stands disposed off and ad-interim / interim order if any stands vacated."

2. It is pertinent to note that in S.C.Suit No.4036 of 1987 the plaintiffs as well as defendant no.3 were represented by the same learned advocate and the plaintiffs were allowed to withdraw the suit on the basis of the consent terms duly signed by the respective parties. The Court Receiver from this Court was to hand over the vacant possession of the suit premises to the respective parties as mentioned in paragraph 5 of the consent terms. The present petitioner approached the trial court by filing Review Petition No.1 of 2004 and submitted that the consent terms were detrimental to her interest, the power of attorney holders viz. Kripalchand Devnani and his son Deepak Devnani were not authorised to sign the consent terms on behalf of the defendant no.3 as the power of attorney dated 17-6-1996 was revoked by her on 12-7-2002. The respondents opposed the review petition on the grounds of maintainability as well as on merits and by the impugned order dated 15-1-2005 the learned Judge of the City Civil Court, Mumbai was pleased to dismiss the review petition. The Court below held that the review was maintainable but on merits there was no case made out to allow the

review petition by recalling the order dated 16-9-2002 dismissing the suit as withdrawn on the basis of the consent terms. The trial Court noted that there was no fraud played on the Court when the order dated 16-9-2002 was passed and the said order did not suffer from any errors apparent on the face of record warranting corrections by the very same Court. In addition the review petition was not based on any subsequent discoveries and there was no other reason made out to entertain the review petition. On the ground of maintainability the trial Court referred to the provisions of Order XLVII Rule 1 of C.P.C. and held that any person who was a party in the suit can lay a review petition and as the review petitioner was impleaded as defendant no.3, she could file such a review petition. The Court also held that the petitioner could not make out a case to show that there was any discovery of new or important material or evidence which, after the exercise of due diligence, was not within her knowledge or could not be produced by her at the time when the suit was dismissed.

3. Admittedly in the instant case there was no decree passed by the trial Court and the suit was

dismissed as withdrawn. The review petitioner was represented by a learned Advocate who also represented both the plaintiffs and the consent terms were signed on behalf of the defendant no.3 by the learned advocate as well as the two constituted power of attorney holders. If the review petitioner had withdrawn the power of attorney on 12-7-2002, nothing stopped her from informing the said fact to her advocate who was appearing in the suit and in any case there was no order passed in favour of either of the parties and the suit was dismissed as withdrawn by taking on record the consent terms. If the review petitioner is aggrieved by any of the consent terms, as rightly pointed out by the trial court, her remedy lies in filing a suit and the review petition has been rightly dismissed.

4. This revision application does not make out a case for causing interference in the well-reasoned order passed by the court below. Hence the revision is rejected summarily.

(B.H.MARLAPALLE,J.)